

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 420 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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STATE OF GUJARAT

Versus

LAKHAMANBHAI TAPUBHAI

Appearance:

Mr.K.P.RAWAL, ADDL. PUBLIC PROSECUTOR for Petitioner

Mr.N.V.Salanki for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 29/09/97

ORAL JUDGEMENT

The State, no doubt, was desirous of making an example out of the indiscipline which, according to the complainant, was displayed by the respondent-accused of Criminal Case No.4859 of 1989 of Chief Judicial Magistrate, Bhavnagar, but, on going through the record, it seems that the order of acquittal dated 20th December 1991 is not required to be interfered with.

2. Claiming that it is a misconduct as per Section 145 of the Bombay Police Act, 1951, the said case came to be lodged by Bhavnagar C-Division Police Inspector. Sub-Sec.3 of Sec.145 deals with the situation of over staying after leave or remaining absence without leave.

3. The consequence of failure to return on duty after leave, would be as per Sub-Sec.(3) to withdraw from duty by the concerned police official.

4. The respondent, at the relevant time, was working as a Head Constable in C-Division Police Station of

Bhavnagar City. He could not remain present after leave was exhausted on account of illness of his own. This could be his defence, with which, for the present I am not concerned and therefore, I am not entering into the merits. However, after recording of plea by the learned Chief Metropolitan Magistrate on 29-6-1990 till the order of acquittal dated 20th December 1991, the matter did not proceed and nothing that can have opportunities to the prosecution to lead evidence has been given and the learned Chief judicial Magistrate has acted under Sec.255(1) of the Cr.P.C. and acquitted the accused. Thus, on account of failure on the part of the prosecution, the order of acquittal came to be passed. In this background, obviously, the order of the trial Court is not required to be interfered with. The appeal is therefore, dismissed.